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1 Q. During the time that you were  
2 going to physical therapy, was there ever  
3 a time period of weeks, days, where you  
4 didn't take pain medication?

5 A. I took one every day. That's  
6 the only way I could get a little bit of  
7 sleep where I could work. I had to.

8 Q. Do you remember what he was  
9 giving you for the pain?

10 A. Well, one time it was Lortab.  
11 And then he changed it to Darvocet. You  
12 know, because Lortab wasn't doing too  
13 good, so he said, "Well, I'll give you  
14 Darvocet." And then one time, he give me  
15 something else. I can't remember what  
16 the name was. He give me another  
17 different kind one time.

18 Q. And while you were going to  
19 Dr. Howorth and working light duty,  
20 that's when you started having all the  
21 problems with your legs, and that's when  
22 you went to your other doctor?

23 A. Other doctor.

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1 Q. All right. Now, that wasn't  
2 covered by comp, was it?

3 A. Huh-uh, my wife had to pay that  
4 with her insurance.

5 Q. Okay. And you're fine with  
6 that, right, because that's not -- you  
7 don't think that's related to your  
8 shoulder injury, do you?

9 A. No. He just couldn't find no  
10 circulation in my legs.

11 Q. And it was in about March that  
12 you decided -- that he told you that you  
13 could stop physical therapy; is that  
14 right?

15 A. Yeah. After I went and had the  
16 stint and artery and everything put in,  
17 he told me to just go ahead and just stop  
18 the therapy.

19 Q. Did he tell you that he wanted  
20 to start it back up sometime later on?

21 A. No, he never did say. He said  
22 we'll just stop it because I told him it  
23 was hurting me worse than it was helping.

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1 Q. And you had two surgeries in  
2 March, one to your heart and one to your  
3 leg?

4 A. Yeah.

5 Q. Ten days apart?

6 A. One, I think, was on the 4th. I  
7 think the other was on the 14th, I think.

8 Q. Were you having -- tell me how  
9 your shoulder was hurting you after the  
10 fact.

11 A. After I had the surgery?

12 Q. Yes, sir.

13 A. It was just excruciating pain.  
14 It feels like something scrubbing in  
15 there all the time. And there's a  
16 certain way I can move it, and it just  
17 pops. It will just pop. And I can't  
18 raise it up.

19 Q. And physical therapy was making  
20 it worse and never did help it?

21 A. No, it wasn't helping at all.  
22 Mark said he hadn't never seen anybody  
23 like that. It was just popping and

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1       cracking every time he tried to move it.  
2       It was just popping, cracking, popping,  
3       cracking. I'd nearly jump off the bed  
4       sometimes it was hurting so bad.

5           Q.     You did -- you wanted to jump  
6       off?

7           A.     Yeah. It was hurting so bad  
8       sometimes, I nearly about jumped off the  
9       bed.

10          Q.     Okay. Oh. I would hurt so  
11       bad --

12          A.     Yeah.

13          Q.     -- it would make you almost  
14       jump --

15          A.     Yeah.

16          Q.     I thought you were talking about  
17       wanting to jump off the bed.

18          A.     A certain way he'd try to move  
19       my shoulder, it would pop. Boy, I'd  
20       nearly about come off the bed.

21          Q.     And the bed being the table?

22          A.     The table he was doing physical  
23       therapy on.

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1 Q. Okay. You have to forgive me.  
2 I was thinking about my children jumping  
3 on the bed, and I was wondering why --

4 A. And he had a lady helping him.  
5 You know, she vouched for the same thing.  
6 She said, "I ain't never seen one pop  
7 like that." They couldn't figure it out  
8 either. He even went over there and  
9 talked to Howorth, and Howorth said he  
10 couldn't figure it out.

11 Q. All right. And the last time  
12 you went to see Dr. Howorth was in May of  
13 2005; right?

14 A. Yeah. He give me a Cortisone  
15 shot the last time I've been back to see  
16 him.

17 Q. Okay. Did he release you at  
18 that time?

19 A. Yeah.

20 Q. Or did he say don't come back?

21 A. He said, "You can come back in  
22 six months. I can give you another  
23 Cortisone." He said, "That's about all I

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1 can do for you. He said, "There's so  
2 much bursitis in it, that's about all I  
3 can do." He said, "I can't give them to  
4 you but twice a year."

5 Q. Did you go back in November?

6 A. I hadn't been back.

7 Q. Why not?

8 A. I just hadn't been back. See, I  
9 have to pay for it now because workman's  
10 comp is through with me I guess. So, I'd  
11 have to pay for it out of my pocket.

12 Q. How do you know worker's comp is  
13 through with you?

14 A. Well, I ain't been back since  
15 April.

16 Q. Okay. But did somebody at  
17 worker's comp tell you, "Okay. We're  
18 done. You're on your own"?

19 A. After he dismissed me.

20 Q. Okay.

21 A. After he dismissed me, I went  
22 and had all these other surgeries done.

23 Q. Okay. But if doctor -- well, my

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1 question is: If Dr. Howorth told you  
2 that you didn't need to come back, did  
3 Ms. Victoria or somebody at CMI call you  
4 and say --

5 A. Huh-uh, not as I know of.

6 Q. Okay. Have you tried to make a  
7 phone call to ask them, "Hey, can I go  
8 back to the doctor"?

9 A. No.

10 Q. Have you thought about it?

11 A. I'm not employed there anymore.

12 Q. Okay.

13 A. Because if I go back, I'll have  
14 to pay for it myself.

15 Q. Okay. And that's just what  
16 you've concluded on your own; right?

17 A. If I don't work there anymore,  
18 I'm pretty sure they wouldn't pay it.

19 Q. Okay. So, the last time you saw  
20 Dr. Howorth, you had stopped working for  
21 a couple of months?

22 A. Yeah, because I had to go have  
23 all this other stuff done.



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1 Q. For the leg. Okay.

2 And I may have asked you this  
3 early on, but do you remember the actual  
4 day that you told Wal-Mart, "Okay. I'm  
5 not coming back. I can't work anymore"?

6 A. I went up there it was in  
7 August.

8 Q. Of last year?

9 A. August of last year. And she  
10 said, "We thought you was still on  
11 leave." I said, "No." I said, "He told  
12 me I could come back." And she said,  
13 "Well, he give you another 30-day leave."  
14 I said, "I didn't even know it." You  
15 know, they had extended it 30 days, and I  
16 didn't even know it. And this was in  
17 August. And she said, "Well, what are  
18 you going to do?" I said, "Well, I  
19 can't -- my legs won't let me work, and  
20 my shoulder won't let me work. I guess  
21 I'll have to take a medical leave, I  
22 mean, a medical discharge." She said,  
23 "Okay. If that's the way you -- you



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1 know, if you can't work, you know, you  
2 can't work."

3 Q. Did anybody at the store  
4 encourage you to come back?

5 A. No.

6 Q. To come back to work?

7 A. (Witness nods head negatively.)

8 Q. The people at the store were  
9 always fine to you, weren't they? They  
10 weren't ever not nice or --

11 A. I didn't get along with Jonathan  
12 that good.

13 Q. Who's Jonathan?

14 A. He was the manager. He was the  
15 head manager.

16 Q. All right.

17 A. But I dealt with him, but, you  
18 know.

19 Q. Have you been seen by any other  
20 doctor since May of 2005 for your  
21 shoulder?

22 A. Huh-uh (negative.)

23 Q. Is that a no?

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1 A. No.

2 Q. Okay. And did Dr. Howorth  
3 actually -- do you remember him saying,  
4 "You are released, you can go back"?

5 A. He never did release me back to  
6 go back to full duty on my arm.

7 Q. Okay. He always just said that  
8 you would be on light duty?

9 A. Limited. Limited to no more  
10 than five pounds.

11 Q. Did he ever tell you that he  
12 thought that one day you'd be able to go  
13 back to work with no restrictions?

14 A. He told me I probably was going  
15 to have trouble out of it from now on.

16 Q. But do you recall him ever  
17 saying, "In two months, you're going to  
18 be able to go back to work without any  
19 problems"?

20 A. No, he never did tell me that.

21 Q. Now, you have not filed another  
22 lawsuit for worker's compensation  
23 benefits?

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1 A. No.

2 Q. And you're not getting any  
3 additional benefits right now?

4 A. I ain't getting nothing. I  
5 ain't got nothing since March. I had  
6 short-term disability, but I paid for  
7 that out of my check. And when they  
8 released me on my legs and everything,  
9 they stopped that. And I couldn't work.  
10 So, I couldn't draw my unemployment.  
11 When you ain't able to work, you can't  
12 draw unemployment. So, I'm just stuck.  
13 I haven't drawn any money since May of  
14 last year.

15 Q. So, you got disability through  
16 your job at Wal-Mart?

17 A. Yeah. I paid it in myself,  
18 short-term disability.

19 Q. And after you left Wal-Mart --

20 A. When these surgeries, that's all  
21 I drew.

22 Q. And you're still out of work?

23 A. Yeah.

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1 Q. Do you think you'll ever be able  
2 to go back to work anywhere?

3 A. Not with my leg and shoulder  
4 like it is.

5 Q. Okay. Which is worse, your leg  
6 or your shoulder?

7 A. Well, it's hard to say. One of  
8 them is hurting all the time.

9 Q. Okay. But it's a combination of  
10 the two?

11 A. Yeah. It's hard to sleep on  
12 this side, and it's hard to sleep on this  
13 side (indicating).

14 Q. How long are you able to like  
15 stand up without your legs just  
16 getting -- do they go numb?

17 A. Oh, yeah. I can't even feel my  
18 feet right now. See, when he went in  
19 here, they sent me to -- he told me they  
20 probably hit a nerve right here in this  
21 one because this is just dead down  
22 through here. This whole leg right in  
23 here is just dead (indicating).

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1 Q. You're hitting your shin?

2 A. Yeah, it's dead. And it's  
3 just -- and I ain't got no feeling in  
4 here. I can't even feel my toes.

5 Q. Do you ever have feeling in your  
6 toes?

7 A. They just stay numb and cold.

8 Q. Numb and cold?

9 A. He said he may have to go back  
10 and do the artery in this leg too. He's  
11 not for sure.

12 Q. But you're indicating the right  
13 leg now?

14 A. Yeah. He said I've got to go  
15 back -- I've got to go back the end of  
16 this month. It will be a six-month  
17 checkup. He'd check the circulation in  
18 my legs again.

19 Q. Okay. How is the circulation in  
20 your left leg since they did that  
21 surgery?

22 A. It still hurts every day. And  
23 my knee swells up, my ankle swells up

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1 every night. And it's just swelled up so  
2 bad I can't hardly stand it.

3 Q. Right leg about the same as the  
4 left leg?

5 A. Well, it ain't quite as bad as  
6 the left one.

7 Q. Is it getting worse?

8 A. Yeah, I don't think they're  
9 getting any better.

10 Q. No. I was asking is the right  
11 one getting worse.

12 A. Oh. Yeah, it's worser than what  
13 it was because I try to put more weight  
14 on it to stay off my left one as much.  
15 And, so, it's hurting me more on my right  
16 one now because I'm trying to, you know,  
17 keep some of the weight off my left one  
18 because it hurts so bad.

19 Q. Okay. Now, you filed a claim  
20 for Social Security disability; right?

21 A. Disability, uh-huh.

22 Q. Do you remember when you did  
23 that?

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1           A.     April 22nd last year.

2           Q.     And you've been to the doctor to  
3 fill out the disability exam?

4           A.     Yeah. They sent me to  
5 Dr. Peterson, then they sent me to  
6 Birmingham, they sent me to a  
7 psychiatrist and everywhere else.

8           Q.     Okay. Where did you go see a  
9 psychiatrist?

10          A.     I seen Dr. -- I think her name  
11 is Dr. Kurtz in Opelika. I got all kind  
12 of doctor's numbers wrote down. I think  
13 her name is Robin Kurtz.

14          Q.     What has she said for you?

15          A.     Psychiatrist?

16          Q.     Yeah.

17          A.     She said, "If I could put you on  
18 the disability, I would put you on it in  
19 a heartbeat." She said, "You need it  
20 bad." Robin Kurtz in Opelika. Kurtz is  
21 K-u-r-t-z.

22                     And they sent me to Dr. Bruce  
23 Pava in Birmingham.



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1 Q. Is he also a psychiatrist?

2 A. No. He's the one on my legs.  
3 He's the one that he believed he hit a  
4 nerve in this leg when he done the  
5 surgery, that's the reason it's dead.

6 Q. Where did you have that surgery  
7 done?

8 A. Opelika.

9 Q. Okay. So, he came down here to  
10 do it?

11 A. Dr. Lazenby is already in  
12 Opelika.

13 Q. Oh, I'm sorry. I thought you  
14 said Pava was in Birmingham.

15 A. No. They sent me -- the  
16 disability people sent me to Birmingham  
17 to Dr. Pava.

18 Q. Okay. To look at your legs?

19 A. To look at my legs. But he  
20 wouldn't tell me nothing. He said they'd  
21 have to tell me that.

22 Q. All right.

23 MR. BROWN: And you're

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1 representing him on the Social Security;  
2 right?

3 MR. TINNEY: Right.

4 Q. (By Mr. Brown) Following the  
5 femoral bypass that you had, did any of  
6 those doctors say that you should have  
7 been able to go back to work, or did  
8 they -- was there ever a point in time  
9 where they said, you know, after you  
10 recuperate for a month or so --

11 A. Dr. Lazenby told me it was up to  
12 me. He said, "You know how your legs  
13 feel." He said, "If you can work on  
14 them, you can work on them. If you  
15 can't, you know, that will be up to you."  
16 And I went back and tried it, and I  
17 couldn't do it. My legs was hurting me  
18 so bad I couldn't do it.

19 Q. You went back and tried at  
20 Wal-Mart?

21 A. Yeah. But I still wasn't using  
22 my arm.

23 Q. Okay. I understand that.

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1           A.     But my legs just wouldn't let me  
2 do it after I had the surgery. It was  
3 just hurting so bad I couldn't do it.

4           Q.     How many times -- how many days  
5 did you try to go back to work at  
6 Wal-Mart?

7           A.     Well, after he got through in  
8 March, I went back and worked -- I don't  
9 think I worked but about one week. I  
10 couldn't stand it. So, I took a -- they  
11 give me a little 30-day leave. And then  
12 I went back and I tried it, and I  
13 couldn't do it. So, the only alternative  
14 I had was to take a medical discharge.

15          Q.     And your Social Security, you  
16 have not gotten anything yet?

17          A.     No, they denied it.

18          Q.     Where was that filed? Do you  
19 know?

20          A.     What?

21          Q.     The Social Security claim.

22          A.     He's handling my Social  
23 Security.

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1 MR. TINNEY: Anniston. You  
2 know, it's a local office.

3 MR. BROWN: I was wondering if  
4 it was Anniston or if it was down in  
5 Opelika.

6 MR. TINNEY: Yeah, Anniston.

7 THE WITNESS: Anniston. They  
8 sent me a letter and denied it about six  
9 or seven months ago.

10 Q. (By Mr. Brown) All right.  
11 Worker's comp -- I may have asked you, I  
12 may not have. If I did, I apologize.  
13 But worker's comp paid for all your  
14 physical therapy too; right?

15 A. Yeah.

16 Q. Okay.

17 A. They paid for that and the  
18 medicine, whatever I had to have.

19 Q. And I know that we've talked a  
20 lot about the conversations that you had  
21 with Ms. Heppes. But the conversations  
22 that you are critical of and that are  
23 based -- that this lawsuit is based on,

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1 are the conversations that occurred  
2 between October the 27th when Dr. Howorth  
3 said you need surgery and November the  
4 25th or 26th when they called you and  
5 said you can get it done?

6 A. Yeah.

7 Q. Okay. So, it's about a  
8 one-month period of time?

9 A. Well, I got hurt on the 27th of  
10 September is when I got hurt.

11 Q. All right. Between the 28th of  
12 September when you got hurt --

13 A. Uh-huh.

14 Q. -- the times that you were  
15 seeing Dr. Shirah --

16 A. Yeah.

17 Q. -- and she was talking to you or  
18 you were having any conversations with  
19 her, that was okay; right?

20 A. Yeah. I was just taking pain  
21 pills and everything, but it wasn't  
22 getting any better.

23 Q. But that's when Dr. Shirah was